

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2138 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DIPAKKUMAR GOPALDAS BASANTANI

Versus

STATE OF GUJARAT

Appearance:

MR ASHWIN V BHATT for Petitioner

MR AG URAIZEE, APP with Mr.MR Anand,PP for Respondent No.1

M/S THAKKAR ASSOC. for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 12/07/96

ORAL JUDGEMENT

The primary grievance expressed by Mr.A.V.Bhatt, learned Advocate for the petitioner is that the learned Magistrate could not have passed order dated 8.11.1995 dismissing the proceeding under Section 97 of the Code of Criminal Procedure, 1973 (2 of 1974) (hereinafter referred to as "the Code") for default. His further

grievance is that if the proceeding was dismissed, the learned Magistrate did not have power to restore as per the order dated 10.11.1995. Hence both these orders are questioned by him in this petition for quashing the whole proceedings under Section 197 of the Code.

2. This is in the background of the fact that the learned Magistrate has passed the order of search warrant and in reply to such order the petitioner had appeared before the learned Magistrate and filed his reply and also had given an application to continue the custody of minor Akash with him. It is not in dispute that the learned Magistrate granted continuance of custody of minor Akash upto 15.11.1995. Proceedings have remained at that stage before the learned Magistrate. Under such circumstances and in the facts of the case it would be in the interest of justice that the matter is left to be decided by the learned Magistrate from the stage from where it is left.

3. The grievance of the learned Advocate for the petitioner against the dismissal order and the restoration order cannot be accepted. In a proceeding under section 97 of the Code the jurisdiction/power of the learned Magistrate is to issue or not to issue search warrants. Under such circumstances dismissal of the application for search warrant for default would certainly call for restoration of such application in order to enable the learned Magistrate to focus his attention on the real jurisdiction vested in him under Section 97 of the Code. Hence, the grievance against the order of dismissal and restoration cannot be entertained in the facts of the case.

Rule is, therefore, discharged. Interim relief vacated.

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